

123 FERC ¶ 61,018
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Kinder Morgan Interstate Gas Transmission LLC

Docket No. CP07-79-000

ORDER DENYING PROTEST AND AUTHORIZING CONSTRUCTION
AND OPERATION OF DELIVERY POINT

(Issued April 4, 2008)

1. On February 2, 2007, Kinder Morgan Interstate Gas Transmission LLC (Kinder Morgan) filed a prior notice request pursuant to the Commission's regulations¹ and its blanket certificate under Part 157 (Subpart F) of Commission's regulations,² to construct and operate a new delivery point in Nebraska for Panhandle Feeders, Inc. (Panhandle Feeders), a feedlot end-user. The prior notice filing was protested by SourceGas Distribution LLC (SourceGas). For the reasons discussed below, we will deny the protest and authorize Kinder Morgan to construct and operate the proposed delivery facilities under its Part 157 blanket certificate.

I. Proposal

2. Panhandle Feeders is currently served by SourceGas, a local gas distribution company (LDC), and firm transportation customer of Kinder Morgan. Kinder Morgan proposes to construct delivery facilities that will bypass SourceGas's local distribution system and provide direct natural gas transportation service to Panhandle Feeders.

3. Kinder Morgan requests authorization to install a 2-inch hot tap on its 16-inch diameter pipeline at approximately milepost 27.86 with a meter and electronic flow measurement equipment and appurtenant facilities on Panhandle Feeders' property

¹ 18 C.F.R. §§ 157.205 and 157.211 (2007).

² *Kansas Nebraska Natural Gas Company, Inc.*, 22 FERC ¶ 62,330 (1983) (order issuing Part 157 blanket certificate to Kinder Morgan's predecessor).

adjacent to Kinder Morgan's pipeline right-of-way.³ Panhandle Feeders will install a 20-foot long, one-inch diameter pipeline from the delivery point to its plant.

4. The delivery point will enable Kinder Morgan to make direct deliveries of up to 120 MMBtu/d to Panhandle Feeders. Panhandle Feeders will reimburse Kinder Morgan for the cost of the delivery point, estimated to be approximately \$23,374. Upon completion of the delivery point, Kinder Morgan will offer open-access transportation service to Panhandle Feeders in accordance with its open-access tariff and Part 284 of the Commission's regulations. Kinder Morgan states that service at the delivery point will be within its authorized level of service and that it will not disadvantage existing customers. Kinder Morgan asserts that it has not yet contracted for transportation service with Panhandle Feeders.

5. Starting on June 1, 2004, Source Gas states that it reserved on Kinder Morgan a Maximum Daily Delivery Quantity (MDDQ) of 120 MMBtu/d of firm and no-notice transportation service to enable it to provide up to 120 MMBtu/d of service to Panhandle Feeders. SourceGas asserts that it provides firm service to Panhandle Feeders under Rate Schedule GSC (Choice Gas Service) on file with the Nebraska Public Service Commission to meet Panhandle Feeders' peaking requirements for gas. SourceGas explains that it has no written agreement with Panhandle Feeders because its Rate Schedule GSC does not require customers to execute a written contract for service and that in 2007 it delivered 169,762 therms (or an average of 46.5 MMBtu/d) to Panhandle Feeders.⁴

II. Interventions

6. Notice of Kinder Morgan's prior notice request was published in the *Federal Register* on February 15, 2007 (72 Fed. Reg. 7743). On April 6, 2007, SourceGas filed a timely, unopposed motion to intervene that included a protest and request for hearing.⁵ On April 24, 2007, Kinder Morgan filed an answer to SourceGas' protest. On May 24,

³ Kinder Morgan's application also describes certain auxiliary facilities which it will install in reliance on section 2.55 of the Commission's regulations, which authorizes certain installations which are auxiliary or appurtenant to authorized or proposed facilities, subject to that section's notice requirement. 18 C.F.R. § 2.55 (2007).

⁴ SourceGas' data response No. 1 (filed February 5, 2008).

⁵ Timely, unopposed motions to intervene are automatically granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2007).

2007, SourceGas filed a response to Kinder Morgan's answer. On June 5, 2007, Kinder Morgan filed an answer to SourceGas' response.⁶

III. Discussion

7. Since the facilities to be constructed will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the construction and operation of these facilities are subject to the requirements of section 7(c) of the Natural Gas Act (NGA). Further, although Kinder Morgan filed its application pursuant to the prior notice procedures in the Commission's Part 157 blanket certificate regulations, the 30-day reconciliation period in the regulations has expired, and SourceGas has not withdrawn its protest. Thus, in accordance with section 157.205(g) of the regulations, Kinder Morgan's prior notice request will be processed as though it were an application for case-specific authorization under section 7(c) of the NGA.⁷

A. Commission Bypass Policy

8. The Commission allows competition between LDCs and interstate pipelines where there is no indication that the proposed service is the result of anti-competitive or unduly discriminatory behavior. This policy is based on the belief that natural gas consumers are better served by a competitive natural gas market which encourages greater access to competitively priced natural gas at lower costs.⁸ The Commission strives to honor the end-user's decision as to whether it is economical to initiate direct service from a pipeline

⁶ Although the Commission's Rules of Practice and Procedure do not permit answers to protests or answers to answers, the Commission finds good cause to waive Rule 213(a) to consider these pleadings, as they include information that assists in the decision-making process. 18 C.F.R. § 385.213(a)(2) (2006).

⁷ See, e.g., *Northwest Pipeline Corporation*, 68 FERC ¶ 61,336, at 62,247 (1994).

⁸ See, e.g., *CenterPoint Energy Gas Transmission Co.*, 108 FERC ¶ 61,180, *reh'g denied*, 109 FERC ¶ 61,197 (2004) (firm bypass service for industrial end-user; contract demand reduction not requested); *Algonquin Gas Transmission Co.*, 95 FERC ¶ 61,138, *reh'g denied*, 96 FERC ¶ 61,364 (2001) (firm bypass service replaces interruptible service); *Southern Natural Gas Co.*, 91 FERC ¶ 61,008 (2000) (interruptible service bypassing interruptible service to end-user); *Texas Eastern Transmission Corp.*, 85 FERC ¶ 61,324 (1998) (interruptible bypass service); *Williams Natural Gas Co.*, 81 FERC ¶ 61,301 (1997) (firm bypass service replaces firm and interruptible service to end-user; no contract demand reduction requested as LDC had no capacity on pipeline to serve end-user); and *Northern Natural Gas Co.*, 46 FERC ¶ 61,270, *reh'g denied*, 48 FERC ¶ 61,232 (1989) (interruptible bypass service approved after expiration of firm sales agreement with end-user).

supplier. This approach allows all participants greater access to the natural gas market and recognizes that there is no guarantee that today's customer will always remain a customer.⁹

9. Kinder Morgan is proposing to provide service to Panhandle Feeders in a competitive environment. Kinder Morgan's proposal for construction and operation of the facilities is responsive to Panhandle Feeders' request for natural gas service. This proposal will provide a direct connection to interstate natural gas supplies for use at Panhandle Feeders' feedlot, in a manner consistent with the Commission's policy objectives.

B. Arguments Against the Proposed Delivery Point

10. SourceGas argues that Kinder Morgan's proposal should be rejected or set for a trial-type evidentiary hearing because it is anti-competitive, unduly discriminatory, and not in the public interest. However, while SourceGas asserts that the new delivery point will cause it to lose business, SourceGas has not presented evidence that Kinder Morgan has engaged in anti-competitive practices or undue discrimination. Further, the Commission has held in prior decisions that we are not willing to shield LDCs from the effects of competitive forces because we believe that, in the final analysis, all consumers will benefit from the Commission's competitive policies.¹⁰ Panhandle Feeders has evaluated its needs and requested the proposed service based on its analysis of Kinder Morgan's ability to provide the needed service. Kinder Morgan is required to honor valid requests for service on an open-access basis. The end-user's decision is consistent with the Commission's competitive policies.

11. SourceGas argues that Kinder Morgan's proposed direct delivery point is anti-competitive and unduly discriminatory because its estimated cost is significantly less than the cost of other Kinder Morgan delivery points. Kinder Morgan explains that the new delivery point is relatively small, requiring only 120 MMBtu/d, and thus will not need flow control equipment. Further, the Commission recognizes that the costs of delivery taps vary greatly depending on the volume of gas requested for delivery and the resulting physical size of the interconnect and the type of facilities required. Thus, the relative lower cost of Kinder Morgan's proposed delivery point for direct deliveries to Panhandle Feeders is not by itself evidence that Kinder Morgan's proposal is anti-competitive or unduly discriminatory to SourceGas.

⁹ *Texas Gas Transmission Corporation*, 65 FERC ¶ 61,275 (1993).

¹⁰ *See, e.g., Tennessee Gas Pipeline Company*, 85 FERC ¶ 61,417 (1998); *Transcontinental Gas Pipe Line Corporation*, 84 FERC ¶ 61,160 (1998); *Paiute Pipeline Company*, 68 FERC ¶ 61,064 (1994) and *Northern Natural Gas Company*, 46 FERC ¶ 61,270 (1989).

12. SourceGas contends that there is a potential for discriminatory conduct because Kinder Morgan has not provided the rates and other details in its service agreement with Panhandle Feeders. This argument is entirely speculative. Further, while Kinder Morgan acknowledges that it has not yet executed its service agreement with Panhandle Feeders, Kinder Morgan's prior notice filing states that it will provide open-access transportation service pursuant to its tariff and Part 284 of the regulations.

13. SourceGas states that it incurs annual costs to reserve its firm capacity on Kinder Morgan attributable to Panhandle Feeders. SourceGas asserts that Panhandle Feeders intends to take interruptible transportation service from Kinder Morgan and that if Panhandle Feeders ceases to take firm service from SourceGas after the bypass, costs may shift to SourceGas' remaining customers.

14. These cost-shifting arguments also are speculative. Moreover, any potential for adverse impacts on SourceGas' remaining customers can be addressed by the Oklahoma State Commission which has jurisdiction to address cost-shifting and rate effects at the retail level. As we have noted in other bypass cases, states regulatory agencies may place some of the cost-shifting responsibility upon the LDC's shareholders by means of rate design or by requiring the end-user who obtains bypass service to pay, upon returning to the utility's service, some or all of the costs shifted to the remaining customers by reason of the end-user's exit from the utility service.¹¹

15. SourceGas asserts that Kinder Morgan's proposed delivery point facilities would duplicate the distribution facilities currently used by SourceGas to serve Panhandle Feeders. Panhandle Feeders, however, will reimburse Kinder Morgan for the facility costs. Thus, the facility costs will not affect Kinder Morgan's rates. Further, SourceGas can continue to use its facilities to compete with Kinder Morgan for Panhandle Feeders' business.

C. Contract Demand Reduction

16. Although SourceGas has no written contract with Panhandle Feeders, SourceGas argues that the Commission's approval of bypass will leave SourceGas stranded with 120 MMBtu/d of firm capacity that it reserved on Kinder Morgan's system in order to provide service to Panhandle Feeders. Thus, citing *Texas Gas Transmission Corporation (Texas Gas)*,¹² SourceGas argues that the Commission should require Kinder Morgan to allow SourceGas to reduce its contract demand and associated demand charges by

¹¹ *Northern Natural Gas Co.*, 48 FERC ¶ 61,232, at 61,829 (1989).

¹² 68 FERC ¶ 61,063 (1994), *supplemental information required*, 69 FERC ¶ 61,245 (1994), *reh'g denied*, 70 FERC ¶ 61,207 (1995) (contract demand reduction authorized where firm bypass service displaced LDC's firm service to end-user).

120 MMBtu/d effective on the date that Kinder Morgan commences direct service to Panhandle Feeders. SourceGas argues that without the contract demand reduction Kinder Morgan would be double billing for the same contract demand that is attributable to an end-user that Kinder Morgan will now serve directly.

17. Kinder Morgan opposes the request for contract demand reduction because SourceGas has not met its evidentiary burden to demonstrate an identifiable connection between its contract with Panhandle Feeders and SourceGas' firm service with Kinder Morgan. As to the anticipated bypass service, Kinder Morgan states that Panhandle Feeders has not contracted with it for transportation service through the proposed delivery point and that it has no knowledge of the arrangement Panhandle Feeders has or may make for the receipt of gas supplies at the proposed delivery point.¹³

18. In the *Texas Gas* bypass proceeding, the Commission explained that in order for an LDC to be entitled to a reduction in contract demand, the LDC must demonstrate that: (1) a nexus exists between the LDC's contract demand on the bypassing pipeline and the LDC's service to the end-user; and (2) there is a connection between the LDC's level of requested reduction in contract demand on the pipeline and the level of service that the pipeline provides the departing end-user.¹⁴ The Commission also stated that if the Commission determines, after appropriate procedures, that contract demand reductions are warranted, the order approving the bypass will find the increment of contract demand to be reduced not just and reasonable under NGA section 5.

¹³ Kinder Morgan's data response (filed February 4, 2008).

¹⁴ 69 FERC ¶ 61,245 at 61,932 (1994). The Commission subsequently applied this clarification to deny a contract demand reduction in *Transcontinental Gas Pipeline Corp.*, 84 FERC ¶ 61,160, at 61,873 (1998) (requested reduction denied lacking an end-user-LDC firm contract); *Texas Gas Transmission Corp.*, 76 FERC ¶ 61,316, at 62,537 (1996) (requested reduction denied lacking a written agreement); *Mojave Pipeline Co.*, 72 FERC ¶ 61,167, at 61,832-33 (1995) (no nexus shown); *Great Lakes Gas Transmission Limited partnership*, 68 FERC ¶ 61,376 (1994) (bypassing pipeline's existing firm service did not include end-user's firm requirements); *Paiute Pipeline Co.*, 68 FERC ¶ 61,199 (1994) (interruptible bypass service displaces LDC's interruptible service to end-user); *Paiute Pipeline Co.*, 68 FERC ¶ 61,064 (1994), *additional information required*, 69 FERC ¶ 61,247 (1994), *reh'g granted*, 70 FERC ¶ 61,227 (1995) (interruptible bypass capacity will not displace LDC's continuing firm and standby service to end-users), *reh'g denied*, 71 FERC ¶ 61,096 (1995); and *Texas Gas Transmission Corp.*, 65 FERC ¶ 61,275, at 62,264 (1993) (bypassing pipeline did not serve the LDC before the bypass). Also, the Commission denied a contract demand reduction in *Tennessee Gas Pipeline Co.*, 85 FERC ¶ 61,417 (1998) (interruptible bypass service did not reduce LDC's firm service to end-user).

19. The requested contract demand reduction is not appropriate under the facts presented. Even if we assume that Kinder Morgan and Panhandle Feeders ultimately will enter into a firm service agreement, there still is no basis to conclude that Kinder Morgan will collect demand charges twice for the same capacity, like the situation in *Texas Gas*. That is because the record in this proceeding does not show a nexus between SourceGas' firm service on Kinder Morgan and its service to Panhandle Feeders.

20. SourceGas is not required to provide Panhandle Feeders with any particular level of firm service under a written agreement (with a stated term) and Panhandle Feeders is under no obligation to purchase any particular level of service from SourceGas. The record also shows that between 2004-2007, Panhandle Feeders consistently took gas from SourceGas at a relatively low load factor (no higher than 38.7 percent in 2007) and that in 2007 SourceGas delivered an average of 46.5 MMBtu/d to Panhandle Feeders. In the absence of any written firm service agreement between SourceGas and Panhandle Feeders, this information is not evidence that SourceGas relied on any commitment from Panhandle Feeders in deciding how much firm capacity to reserve on Kinder Morgan's system. Thus, there is no demonstrated nexus between SourceGas' requested reduction in its contract demand on Kinder Morgan and any particular amount of firm business that SourceGas may lose.

21. We note that SourceGas is not without a remedy. It may release unneeded firm capacity pursuant to Kinder Morgan's capacity release program. SourceGas may also seek to use the unneeded firm capacity to provide service to another of its Rate Schedule CGS shippers or to other shippers.

22. As stated above, because the protest in this proceeding was not withdrawn, we treated Kinder Morgan's application as an application for specific section 7(c) authorization to construct facilities. However, when the Commission ultimately finds that the protest should be denied, it is Commission policy to authorize the construction and operation of the delivery facilities under the applicant's Part 157 blanket certificate, rather than grant redundant case-specific certificate authority.¹⁵ Therefore, we will authorize Kinder Morgan to construct its proposed delivery point under its Part 157 blanket certificate.

23. Because we are denying SourceGas' protest to Kinder Morgan's prior notice filing and authorizing the proposal under Kinder Morgan's Part 157 blanket certificate, the project is subject to the environmental requirements of section 157.206(b) of the regulations applicable to projects undertaken by pipelines under their Part 157 blanket certificates.¹⁶ For that reason, section 380.4(a)(21) of the regulations provides a

¹⁵ *Destin Pipeline Company*, 83 FERC ¶ 61,308 (1998).

¹⁶ 18 C.F.R. § 157.206(b) (2007).

categorical exclusion for approvals of protested prior notice filings.¹⁷ Therefore, no environmental analysis is required.

24. As stated above, SourceGas requests that the Commission order a trial-type evidentiary hearing before approving Kinder Morgan's proposal. The existing written record, however, provides a sufficient basis for resolving the relevant issues.¹⁸ Therefore, the request for a formal evidentiary hearing is denied.

D. Conclusion

25. For the reasons discussed above, we find that Kinder Morgan's proposed facilities for direct deliveries to Panhandle Feeders are required by the public convenience and necessity.

26. The Commission, on its own motion, received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, and upon consideration of the record,

The Commission orders:

(A) Kinder Morgan is authorized to construct and operate the delivery point for Panhandle Feeders in accordance with its Subpart F blanket certificate.

(B) SourceGas' protest and its request for a reduction in contract demand are denied.

(C) SourceGas' request for a formal evidentiary hearing on the bypass proposal is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁷ 18 C.F.R. § 380.4(a)(21) (2007).

¹⁸ See, e.g., *Pine Needle LNG Company*, 77 FERC ¶ 61,229, at 61,916 (1996) and *Cascade Natural Gas Corp. v. FERC*, 955 F.2d 1412 (10th Cir. 1992).